IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 167 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

ANAND CHEM. INDUSTRIES PVT. LTD.

Appearance:

1. INCOME TAX REFERENCE No. 167 of 1991
MR MANISH R BHATT for Petitioner No. 1
MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 08/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. At the instance of the revenue, the following question, arising out of the order passed by the Income-tax Appellate Tribunal, Ahmedabad Bench-A, has been referred to this Court under the provisions of Section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act").

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that in computing disallowance in respect of remuneration benefit and amenities pertaining to the director of the assessee company provisions of section 40(c) should be applied under which there is one overall limit and that provisions of section 40A(5) should not be applied under which there are two separate limits, one for salary and the other for perquisites?"

2. We have heard Senior Standing Counsel Shri Mannish Bhatt appearing for the applicant-revenue and learned advocate Shri Manish J.Shah appearing for the respondent-assessee.

3. For the reasons stated hereinbelow, we would not like to answer the question referred to this Court.

4. It is not in dispute that the amount of salary and the value of perquisites given by the respondent-assessee to its Director did not exceed Rs.85,000/- for the Assessment Year 1985-86, with which we are concerned. The question with regard to disallowance would not arise for the assessment year in question in view of the fact that the limit set up for such a disallowance was Rs.1,02,000/- for the assessment year 1985-86.

5. In the circumstances, in our opinion, the question is academic and, therefore, we decline to answer the question as to whether for the purpose of considering disallowance provisions of Section 40(c) or provisions of Section 40A(5) were to be considered.

The reference stands disposed of with no order as to costs.

(A.R. DAVE,J.)

(A.M. KAPADIA,J.)

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